IT 95-43
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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| THE DEPARTMENT OF REVENUE | ) | |
| OF THE STATE OF ILLINOIS | ) | |
| | ) | Docket No.: |
| v. | ) | FEIN or SSN: |
| | ) | |
| XXXXX | ) | Harve D. Tucker, |
| Taxpayer | ) | Administrative Law Judge |

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter comes on for hearing pursuant to the Taxpayer's timely protest to the Notice of Deficiency dated April 13, 1993, for income tax and penalties. At issue is whether the Retailers' Occupation Tax returns disclosed unreported receipts subject to Illinois Income Tax. Following the hearing, submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Taxpayer.

FINDINGS OF FACT:

1. The Taxpayer filed federal Form 1040, U.S. Individual Income Tax Return, for 1989, including Schedule C, Profit or Loss From Business, for DCI, a sole proprietorship.

2. DCI reported gross receipts of $478,408 on the cash basis of accounting on Schedule C.

3. For Illinois Retailers' Occupation Tax (sales tax) purposes, DCI reported and paid tax on the accrual basis, i.e., when the customer was billed.

4. In the course of the DCI tax audit by the Illinois Department of Revenue, the auditor determined that the Taxpayer's method of accruing and

the actual amount of gross receipts for sales tax purposes was correct.

5. The auditor further determined that gross receipts for income tax purposes should be the same as for sales tax purposes. He did not attempt to reconcile DCI's reported gross income on Schedule C with actual cash receipts, rejecting that method.

CONCLUSIONS OF LAW: The Department of Revenue auditor did not use a minimum standard of reasonableness in his audit of DCI, specifically in determining its gross receipts. Although it is permissible to use one method of accounting for income tax purposes and another method for sales tax purposes as the Taxpayer did, the auditor did not agree with this method. He did not attempt to reconcile DCI's reported gross receipts with actual cash receipts nor did he indicate any evidence of a discrepancy between reported and actual cash receipts. Accordingly, the gross receipts as reported by the Taxpayer for income tax purposes are correct.

It is therefore recommended that the Notice of Deficiency be withdrawn and that a final decision be issued consistent with the determinations memorialized above.

Harve D. Tucker
Administrative Law Judge

Date